

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1278

Introduced by Senator Wolk

February 23, 2012

An act to amend ~~Section~~ *Sections 65007, 65302.9 of, and to amend, repeal, and add Section, 65860.1, and 65865.5 of, the Government Code, and to amend Section 9610 of the Water Code*, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1278, as amended, Wolk. Planning and zoning: flood protection: Sacramento-San Joaquin Valley.

(1) Existing law requires each city and county within the Sacramento-San Joaquin Valley to amend its general plan, as specified, within 24 months of the adoption of the Central Valley Flood Protection Plan by the Central Valley Flood Protection Board. Existing law requires the Central Valley Flood Protection Board, the Department of Water Resources, and local flood agencies to collaborate with cities or counties by providing the cities and counties with information and other technical assistance to assist with complying with these requirements.

This bill would *instead require each city and county to amend its general plan, as specified, within 24 months of the Department of Water Resources issuing maps for areas protected by the State Plan of Flood Control. The bill would* additionally require the Department of Water Resources to provide financial assistance to cities and counties, to the extent funding is available for that purpose.

(2) Existing law prohibits a city or county within the Sacramento-San Joaquin Valley from entering into a development agreement for property

that is located in a flood hazard zone unless the city or county makes specified findings, including, among others, that certain conditions have been imposed by the city or county.

This bill would, ~~until January 1, 2017, additionally~~ authorize a city or county to make a finding that ~~the city or county does not have access to information regarding the urban level of protection for the property, and the property is located outside a flood hazard zone that is subject to depths of flooding greater than 3 feet during a 200-year flood, thereby authorizing the city or county to enter into a development agreement for that property~~ property in an undetermined risk area, as defined, has met the urban level of flood protection, as specified.

(3) Existing law requires the Department of Water Resources to develop preliminary maps for the 100- and 200-year flood plains protected by project levees, as specified, and to provide the preliminary maps to cities and counties within the Sacramento-San Joaquin Valley.

This bill would additionally require the department, before July 2, 2013, to issue maps for areas protected by the State Plan of Flood Control.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65007 of the Government Code is
2 amended to read:

3 65007. As used in this title, the following terms have the
4 following meanings, unless the context requires otherwise:

5 (a) “Adequate progress” means all of the following:

6 (1) The total project scope, schedule, and cost of the completed
7 flood protection system have been developed to meet the
8 appropriate standard of protection.

9 (2) (A) Revenues that are sufficient to fund each year of the
10 project schedule developed in paragraph (1) have been identified
11 and, in any given year and consistent with that schedule, at least
12 90 percent of the revenues scheduled to be received by that year
13 have been appropriated and are currently being expended.

14 (B) Notwithstanding subparagraph (A), for any year in which
15 state funding is not appropriated consistent with an agreement
16 between a state agency and a local flood management agency, the
17 Central Valley Flood Protection Board may find that the local

1 flood management agency is making adequate progress in working
2 toward the completion of the flood protection system.

3 (3) Critical features of the flood protection system are under
4 construction, and each critical feature is progressing as indicated
5 by the actual expenditure of the construction budget funds.

6 (4) The city or county has not been responsible for a significant
7 delay in the completion of the system.

8 (5) The local flood management agency shall provide the
9 Department of Water Resources and the Central Valley Flood
10 Protection Board with the information specified in this subdivision
11 sufficient to determine substantial completion of the required flood
12 protection. The local flood management agency shall annually
13 report to the Central Valley Flood Protection Board on the efforts
14 in working toward completion of the flood protection system.

15 (b) “Central Valley Flood Protection Plan” has the same
16 meaning as that set forth in Section 9612 of the Water Code.

17 (c) “Developed area” has the same meaning as that set forth in
18 Section 59.1 of Title 44 of the Code of Federal Regulations.

19 (d) “Flood hazard zone” means an area subject to flooding that
20 is delineated as either a special hazard area or an area of moderate
21 hazard on an official flood insurance rate map issued by the Federal
22 Emergency Management Agency. The identification of flood
23 hazard zones does not imply that areas outside the flood hazard
24 zones, or uses permitted within flood hazard zones, will be free
25 from flooding or flood damage.

26 (e) “Nonurbanized area” means a developed area or an area
27 outside a developed area in which there are fewer than 10,000
28 residents.

29 (f) “Project levee” means any levee that is part of the facilities
30 of the State Plan of Flood Control.

31 (g) “Sacramento-San Joaquin Valley” means lands in the bed
32 or along or near the banks of the Sacramento River or San Joaquin
33 River, or their tributaries or connected therewith, or upon any land
34 adjacent thereto, or within the overflow basins thereof, or upon
35 land susceptible to overflow therefrom. The Sacramento-San
36 Joaquin Valley does not include lands lying within the Tulare Lake
37 basin, including the Kings River.

38 (h) “State Plan of Flood Control” has the same meaning as that
39 set forth in subdivision (j) of Section 5096.805 of the Public
40 Resources Code.

(i) “Tulare Lake basin” means the Tulare Lake Hydrologic Region as defined in the California Water Plan Update 2009, prepared by the Department of Water Resources pursuant to Chapter 1 (commencing with Section 10004) of Part 1.5 of Division 6 of the Water Code.

(j) “*Undetermined risk area*” means an area with possible, but undetermined, flood hazard risk for which an analysis of an urban level of flood protection has not been conducted by the Department of Water Resources, a local flood agency, or the National Flood Insurance Program.

(k) “Urban area” means a developed area in which there are 10,000 residents or more.

(l) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(m) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources.

(n) “*Zone B and X (shaded)*” means an area of moderate flood hazard, usually the area between the limits of the 100-year and 500-year floods, and designates base floodplains of lesser hazards, such as areas protected by levees from 100-year flood, or shallow flooding areas with average depths of less than one foot or drainage areas less than one square mile.

SECTION 1.

SEC. 2. Section 65302.9 of the Government Code is amended to read:

65302.9. (a) ~~Within~~ *Before July 2, 2013, the Department of Water Resources shall issue maps for areas protected by the State Plan of Flood Control.*

(b) ~~Within 24 months of the adoption of the Central Valley Flood Protection Plan by the Central Valley Flood Protection Board pursuant to Section 9612 of the Water Code~~ *department issuing the maps, each city and county within the Sacramento-San Joaquin Valley, shall amend its general plan to contain all of the following:*

(1) (A) The data and analysis contained in the Central Valley Flood Protection Plan *pursuant to Section 9612 of the Water Code*, including, but not limited to, the locations of the facilities of the State Plan of Flood Control, ~~the locations of other flood management facilities,~~ and the locations of the real property protected by those facilities, ~~and the locations of flood hazard zones.~~

(B) *The locations of flood hazard zones, including, but not limited to, locations mapped by the Federal Emergency Management Agency Flood Insurance Rate Map or the Flood Hazard Boundary Map, locations that participate in the National Flood Insurance Program, locations identified as Zones B and X (shaded) by the Federal Emergency Management Agency, and locations mapped by a local flood agency or flood district.*

(2) Goals, policies, and objectives, based on the data and analysis identified pursuant to paragraph (1), for the protection of lives and property that will reduce the risk of flood damage.

(3) Feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to paragraph (2).

(b) *An undetermined risk area shall be presumed to be at risk for a flood hazard unless deemed otherwise by the State Plan of Flood Control, an official National Flood Insurance Program rate map issued by the Federal Emergency Management Agency, or a finding made by a city or county based on a determination of substantial evidence by a local flood agency.*

~~(b)~~

(c) (1) To assist each city or county in complying with this section, the Central Valley Flood Protection Board, the Department of Water Resources, and local flood agencies shall collaborate with cities or counties by providing them with information and other technical assistance.

(2) To assist each city or county in complying with this section, the Department of Water Resources shall provide financial assistance to cities and counties to the extent funding is available for that purpose.

~~(e)~~

(d) In implementing this section, each city and county, both general law and charter, within the Sacramento-San Joaquin Valley,

1 shall comply with this article, including, but not limited to, Sections
2 65300.5, 65300.7, 65300.9, and 65301.

3 ~~(d)~~

4 ~~(e)~~ Notwithstanding any other ~~provision of law~~, this section
5 ~~applies shall apply~~ to all cities, including charter cities, and
6 counties within the Sacramento-San Joaquin Valley. The
7 Legislature finds and declares that flood protection in the
8 Sacramento and San Joaquin Rivers drainage areas is a matter of
9 statewide concern and not a municipal affair as that term is used
10 in Section 5 of Article XI of the California Constitution.

11 SEC. 2. ~~Section 65865.5 of the Government Code is amended~~
12 ~~to read:~~

13 ~~65865.5. (a) Notwithstanding any other provision of law, after~~
14 ~~the amendments required by Sections 65302.9 and 65860.1 have~~
15 ~~become effective, the legislative body of a city or county within~~
16 ~~the Sacramento-San Joaquin Valley shall not enter into a~~
17 ~~development agreement for property that is located within a flood~~
18 ~~hazard zone unless the city or county finds, based on substantial~~
19 ~~evidence in the record, one of the following:~~

20 ~~(1) The facilities of the State Plan of Flood Control or other~~
21 ~~flood management facilities protect the property to the urban level~~
22 ~~of flood protection in urban and urbanizing areas or the national~~
23 ~~Federal Emergency Management Agency standard of flood~~
24 ~~protection in nonurbanized areas.~~

25 ~~(2) The city or county has imposed conditions on the~~
26 ~~development agreement that will protect the property to the urban~~
27 ~~level of flood protection in urban and urbanizing areas or the~~
28 ~~national Federal Emergency Management Agency standard of~~
29 ~~flood protection in nonurbanized areas.~~

30 ~~(3) The local flood management agency has made adequate~~
31 ~~progress on the construction of a flood protection system that will~~
32 ~~result in flood protection equal to or greater than the urban level~~
33 ~~of flood protection in urban or urbanizing areas or the national~~
34 ~~Federal Emergency Management Agency standard of flood~~
35 ~~protection in nonurbanized areas for property located within a~~
36 ~~flood hazard zone, intended to be protected by the system. For~~
37 ~~urban and urbanizing areas protected by project levees, the urban~~
38 ~~level of flood protection shall be achieved by 2025.~~

39 ~~(4) The city or county does not have access to information~~
40 ~~regarding the urban level of protection for the property and the~~

1 property is located outside of a flood hazard zone that is subject
2 to depths of flooding greater than three feet during a 200-year
3 flood.

4 (b) ~~The effective date of amendments referred to in this section~~
5 ~~shall be the date upon which the statutes of limitation specified in~~
6 ~~subdivision (c) of Section 65009 have run or, if the amendments~~
7 ~~and any associated environmental documents are challenged in~~
8 ~~court, the validity of the amendments and any associated~~
9 ~~environmental documents has been upheld in a final decision.~~

10 (c) ~~This section does not change or diminish existing~~
11 ~~requirements of local flood plain management laws, ordinances,~~
12 ~~resolutions, or regulations necessary to local agency participation~~
13 ~~in the national flood insurance program.~~

14 (d) ~~This section shall remain in effect only until January 1, 2017,~~
15 ~~and as of that date is repealed, unless a later enacted statute, that~~
16 ~~is enacted before January 1, 2017, deletes or extends that date.~~

17 SEC. 3. ~~Section 65856.5 is added to the Government Code, to~~
18 ~~read:~~

19 65856.5. (a) ~~Notwithstanding any other provision of law, after~~
20 ~~the amendments required by Sections 65302.9 and 65860.1 have~~
21 ~~become effective, the legislative body of a city or county within~~
22 ~~the Sacramento-San Joaquin Valley shall not enter into a~~
23 ~~development agreement for property that is located within a flood~~
24 ~~hazard zone unless the city or county finds, based on substantial~~
25 ~~evidence in the record, one of the following:~~

26 (1) ~~The facilities of the State Plan of Flood Control or other~~
27 ~~flood management facilities protect the property to the urban level~~
28 ~~of flood protection in urban and urbanizing areas or the national~~
29 ~~Federal Emergency Management Agency standard of flood~~
30 ~~protection in nonurbanized areas.~~

31 (2) ~~The city or county has imposed conditions on the~~
32 ~~development agreement that will protect the property to the urban~~
33 ~~level of flood protection in urban and urbanizing areas or the~~
34 ~~national Federal Emergency Management Agency standard of~~
35 ~~flood protection in nonurbanized areas.~~

36 (3) ~~The local flood management agency has made adequate~~
37 ~~progress on the construction of a flood protection system that will~~
38 ~~result in flood protection equal to or greater than the urban level~~
39 ~~of flood protection in urban or urbanizing areas or the national~~
40 ~~Federal Emergency Management Agency standard of flood~~

1 ~~protection in nonurbanized areas for property located within a~~
2 ~~flood hazard zone, intended to be protected by the system. For~~
3 ~~urban and urbanizing areas protected by project levees, the urban~~
4 ~~level of flood protection shall be achieved by 2025.~~

5 ~~(b) The effective date of amendments referred to in this section~~
6 ~~shall be the date upon which the statutes of limitation specified in~~
7 ~~subdivision (c) of Section 65009 have run or, if the amendments~~
8 ~~and any associated environmental documents are challenged in~~
9 ~~court, the validity of the amendments and any associated~~
10 ~~environmental documents has been upheld in a final decision.~~

11 ~~(c) This section does not change or diminish existing~~
12 ~~requirements of local flood plain management laws, ordinances,~~
13 ~~resolutions, or regulations necessary to local agency participation~~
14 ~~in the national flood insurance program.~~

15 ~~(d) This section shall become operative on January 1, 2017.~~

16 *SEC. 3. Section 65860.1 of the Government Code is amended*
17 *to read:*

18 65860.1. (a) ~~Within 36 months of the adoption Central Valley~~
19 ~~Flood Protection Plan by the Central Valley Flood Protection Board~~
20 ~~pursuant to Section 9612 of the Water Code, but not~~ *Not* ~~more than~~
21 ~~12 months after the amendment of its general plan pursuant to~~
22 ~~Section 65302.9, each city and county within the Sacramento-San~~
23 ~~Joaquin Valley shall amend its zoning ordinance so that it is~~
24 ~~consistent with the general plan, as amended.~~

25 ~~(b) Notwithstanding any other provision of law, this section~~
26 ~~applies shall apply to all cities, including charter cities, and~~
27 ~~counties within the Sacramento-San Joaquin Valley. The~~
28 ~~Legislature finds and declares that flood protection in the~~
29 ~~Sacramento and San Joaquin Rivers drainage areas is a matter of~~
30 ~~statewide concern and not a municipal affair as that term is used~~
31 ~~in Section 5 of Article XI of the California Constitution.~~

32 *SEC. 4. Section 65865.5 of the Government Code is amended*
33 *to read:*

34 65865.5. (a) ~~Notwithstanding any other provision of law, after~~
35 ~~the amendments required by Sections 65302.9 and 65860.1 have~~
36 ~~become effective, the legislative body of a city or county within~~
37 ~~the Sacramento-San Joaquin Valley shall not enter into a~~
38 ~~development agreement for property that is located within a flood~~
39 ~~hazard zone unless the city or county finds, based on substantial~~
40 ~~evidence in the record, one of the following:~~

1 (1) The facilities of the State Plan of Flood Control or other
2 flood management facilities protect the property to the urban level
3 of flood protection in urban and urbanizing areas or the national
4 Federal Emergency Management Agency standard of flood
5 protection in nonurbanized areas.

6 (2) The city or county has imposed conditions on the
7 development agreement that will protect the property to the urban
8 level of flood protection in urban and urbanizing areas or the
9 national Federal Emergency Management Agency standard of
10 flood protection in nonurbanized areas.

11 (3) The local flood management agency has made adequate
12 progress on the construction of a flood protection system that will
13 result in flood protection equal to or greater than the urban level
14 of flood protection in urban or urbanizing areas or the national
15 Federal Emergency Management Agency standard of flood
16 protection in nonurbanized areas for property located within a
17 flood hazard zone, intended to be protected by the system. For
18 urban and urbanizing areas protected by project levees, the urban
19 level of flood protection shall be achieved by 2025.

20 (4) *The property in an undetermined risk area has met the urban*
21 *level of flood protection based on substantial evidence in the record*
22 *provided by the developer.*

23 (b) The effective date of amendments referred to in this section
24 shall be the date upon which the statutes of limitation specified in
25 subdivision (c) of Section 65009 have run or, if the amendments
26 and any associated environmental documents are challenged in
27 court, the validity of the amendments and any associated
28 environmental documents has been upheld in a final decision.

29 (c) This section does not change or diminish existing
30 requirements of local flood plain management laws, ordinances,
31 resolutions, or regulations necessary to local agency participation
32 in the national flood insurance program.

33 *SEC. 5. Section 9610 of the Water Code is amended to read:*

34 9610. (a) (1) By July 1, 2008, the department shall develop
35 preliminary maps for the 100- and 200-year flood plains protected
36 by project levees. The 100-year flood plain maps shall be prepared
37 using criteria developed or accepted by the Federal Emergency
38 Management Agency (FEMA).

39 (2) The department shall use available information from the
40 2002 Sacramento-San Joaquin River Basin Comprehensive Study,

1 preliminary and regulatory FEMA flood insurance rate maps,
2 recent flood plain studies, and other sources to compile preliminary
3 maps.

4 (3) The department shall provide the preliminary maps to cities
5 and counties within the Sacramento-San Joaquin Valley for use
6 as best available information relating to flood protection.

7 (4) The department shall post this information on the board's
8 Internet Web site and may periodically update the maps as
9 necessary.

10 (b) By July 1, 2008, the department shall give notice to cities
11 in the Sacramento-San Joaquin Valley outside areas protected by
12 project levees regarding maps and other information as to flood
13 risks available from the Federal Emergency Management Agency
14 or another federal, state, or local agency.

15 (c) On or before December 31, 2010, the department shall
16 prepare a status report on the progress and development of the
17 Central Valley Flood Protection Plan pursuant to Section 9612.
18 The department shall post this information on the board's Internet
19 Web site, and make it available to the public.

20 (d) *On or before July 1, 2013, the department shall issue maps*
21 *for areas protected by the State Plan of Flood Control.*